ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MCI WORLDCOM, INC.	)	
	)	CC Docket No. 00-45
Petition for Expedited Declaratory Ruling	)	
Regarding the Process for Adoption of Agreements	)	
Pursuant to Section 252(i) of the Communications Act	)	
and Section 51.809 of the Commission's Rules	)	

JOINT COMMENTS OF BROADSPAN COMMUNICATIONS, INC. D/B/A PRIMARY NETWORK COMMUNICATIONS, INC., @LINK NETWORKS, INC. AND DSL.NET, INC.

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Dated: March 31, 2000

I. Introduction

Pursuant to Public Notice DA-00-592, BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc. ("PNC"), @link Networks, Inc. ("@link"), and DSL.net, Inc. ("DSL.net") (together the "Joint Commenters"), by their undersigned counsel, file their joint comments in the above-captioned proceeding. Joint Commenters are competitive telecommunications carriers who provide advanced telecommunications services to customers throughout the United States.

Joint Commenters must interconnect with the incumbent local exchange carriers ("ILECs") to provide these services and have faced numerous delays by the ILECs and the varying state commission procedures when attempting to adopt or opt-into previously approved interconnection agreements. These delays are quite lengthy, vary by state, and can be harmful to competitive carriers who are attempting to quickly deploy their services throughout the United States.

Therefore, the Joint Commenters agree with the concerns raised in MCI WorldCom, Inc.'s ("MCIW") Revised Petition and respectfully request that the Commission issue a declaratory ruling adopting its proposals.[1] Specifically, the Commission should declare that: (1) a requesting carrier's right under Section 252(i) of the Communications Act of 1934, as amended, ("the Act") and Section 51.809 of the Commission's Rules, 47 C.F.R. § 51.809, to effectively adopt interconnection agreements previously approved by a state commission is not subject to state commission approval; (2) a requesting carrier's adoption of an interconnection agreement is effective upon the date the notice of adoption is provided to the ILEC; and (3) if an ILEC challenges a requesting carrier's

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[1] *Revised Petition of MCI WorldCom, Inc.*, CC Docket No. 00-45 (dated March 7, 2000) ("*Revised Petition*").

adoption of an interconnection agreement, under Commission Rule 51.809(b), 47 C.F.R. § 51.809(b), the ILEC should only be relieved from complying with the adopted terms if it proves that: (a) the cost of providing interconnection to the requesting carrier is greater than the costs of providing interconnection to the carrier that originally negotiated the agreement; (b) the proposed adoption is technically infeasible; or (c) if the requesting carrier has decided to "pick and choose" provisions from several agreements, that it failed to adopt legitimately related terms and conditions.

II. The Commission Should Adopt MCIW's Proposals and Facilitate a National, Streamlined Approach for Requesting Carriers to Adopt or Opt-Into Approved Interconnection Agreements

Although Section 252(i) explicitly states that an ILEC must "make available any interconnection, service, or network element provided under an agreement approved under this section" to a requesting carrier and 47 C.F.R. § 51.809(a) states that ILECs must effect the adoption of such interconnection agreements "without delay," the Joint Commenters and other requesting carriers routinely face ILEC-imposed delays when attempting to use the adoption process. In addition, numerous state commissions require requesting carriers to seek approvals of such adoption or opt-in requests that result in unnecessary delays and expense for these carriers wishing to utilize Section 252(i) to quickly enter a market.[2]

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[2] For example, PNC recently experienced a delay of approximately three months, imposed by Southwestern Bell Telephone Company ("SBC"), when attempting to adopt a previously approved interconnection agreement in Arkansas. In October 1999, PNC sent a letter to SBC seeking to adopt a previously approved interconnection agreement; however, SBC took until January 2000 provide PNC with a copy of the agreement. In addition, SBC attempted to make numerous changes to the previously approved agreement. Therefore, after facing these numerous delays by SBC, PNC attempted to opt-into -- via "pick and choose" -- the Alltel and Advanced Solutions agreements by filing a notification letter with the Arkansas Commission. The Commission granted this opt-in request in a period of 10 days. The availability of this notification procedure not only (continued...)

Therefore, the Joint Commenters strongly urge the Commission to take action to address these problems by issuing a declaratory ruling in this docket adopting MCIW's proposed clarifications under Section 252(i) of the Act and Section 51.809, 47 C.F.R. § 51.809, of the Commission's Rules.

A. The Commission Should Clarify That Under Section 252(i) Requesting Carriers Can Adopt Interconnection Agreements Previously Approved by a State Commission by a Notification Letter

The Joint Commenters agree with MCIW that requesting carriers should be able to adopt previously approved interconnection agreement, or opt-into legitimately related terms and conditions of multiple agreements, by simply sending a notification letter to the ILEC and to the state commission. State commission review and approval of every requesting carrier's adoption of a previously approved interconnection agreement, or opt-in request, is not consistent with or contemplated by Section 252(i) or Section 51.809(a) of the Commission's Rules, 47 C.F.R. §51.809(a).[3] While under Section 252(e), parties to a negotiated or arbitrated agreement are required to submit their agreements to the appropriate state commission for approval, the Act contains no similar requirement that parties submit agreements adopted pursuant to Section 252(i) to the state

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[2](...continued)
enabled PNC to select key provisions of different agreements, it allowed PNC to quickly enter the Arkansas marketplace.

[3] Joint Commenters agree with MCIW that state commissions review of a requesting carrier's request to adopt a previously approved agreement is limited to situations where the ILEC has alleged: (1) the cost of providing interconnection to the requesting carrier are greater than the costs of providing it to the carrier that originally negotiated the agreement; (2) that the proposed adoption is technically infeasible; or (3) when a carrier "picks and chooses" provisions from several previously approved agreements, that the carrier has failed to adopt legitimately related terms and conditions. *See* 47 C.F.R. § 51.809(b).

commissions for approval. Moreover, as the Commission previously recognized in the *Local Competition Order*, Section 252(i) procedures are a means for carriers to quickly commence providing service without taking the time and undergoing the approval process required for a negotiated or arbitrated agreement.[4]

State commission approval of previously approved interconnection agreements is unnecessary, wasteful, and may result in a barrier to entry for competitive carriers. In these states, the commissions have already reviewed the approved interconnection agreements and found them to meet the requirements of the Act. Requiring competing carriers to repeatedly seek approval of the same agreement from the state commission does not make sense. In those states that already permit an adoption by notification procedure, the commissions retain jurisdiction over these agreements and still remain free to hear ILEC challenges to the adoption as described in Section II.C below. By clarifying that requesting carriers can adopt or opt-into previously approved agreements without state commission approval, the Commission will greatly streamline this process and eliminate a major barrier to entry faced by competitive carriers.

In addition, the Commission's implementation of a uniform, nationwide notification procedure for adopting and opting-into agreements will provide much needed certainty to this

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[4] As the Commission previously stated, "A carrier seeking interconnection, network elements, or services pursuant to Section 252(i) need not make such requests pursuant to the procedures for section 251 requests, but shall be permitted to obtain its statutory rights on an expedited basis. . . We conclude that the nondiscriminatory, pro-competition purpose of section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to section 251 before being able to utilize the terms of a previously approved agreement." *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, 16141 ¶ 1321 (1996) *aff'd in part and vacated in part sub nom*, AT&T v. Iowa Utilities Bd., 119 S. Ct. 721 (1999) ("*Local Competition Order*").

process. It will ensure that this option is available in all states to competing carriers and help facilitate their deployment of telecommunications services.

B. A Requesting Carrier's Adoption of an Interconnection Agreement Should be Effective as of the Date the Notice of Adoption is Received by the ILEC

The Joint Commenters agree with MCIW that once an ILEC has received written notification that a requesting carrier has decided to adopt an existing agreement, the ILEC must accept the adoption unless the ILEC has a valid challenge to the adoption based upon the grounds discussed in Section II.C below.

The ILECs have used a number of tactics to preclude or delay requesting carriers' adoption of previously approved agreements: (1) ILECs often take several months to produce an agreement that has such simple changes as inserting in the requesting carrier's name and contact information; (2) ILECs frequently attempt to improperly amend the agreements by inserting "clarifications" not included in the original agreement; and (3) ILECs refuse to allow requesting carriers to adopt certain agreements because they are either "too old" or have little time remaining in their terms. These are not valid reasons for ILECs to delay or refuse to permit requesting carriers to adopt such agreements.

In order to avoid these problems, the Commission should clarify that any agreement adopted pursuant to Section 252(i) is effective as of the date the ILEC receives written notice of the requesting carrier's election to adopt a specific agreement. Such action would help preclude such unfair tactics by the ILECs.

In addition, the Commission should clarify that ILECs cannot unilaterally preclude requesting carriers from adopting or opting-into agreements that have a short time remaining on their term -- *e.g.*, 6 months. Many of these agreements contain provisions that leave the agreement in

effect, upon the expiration of the term, until a new agreement is in place. The negotiation or adoption of a new agreement can take up to a year. The ILECs should not be able to arbitrarily preclude a requesting carrier from adopting such agreements.

C. An ILEC Should Only be Relieved from Complying With Any Portion of an Agreement Adopted By a Requesting Carrier if the ILEC Carries the Burden of Proof Required Under 47 C.F.R. § 51.809(b)

The Joint Commenters agree with MCIW that the Commission should clarify that an ILEC will only be excused from complying with any portion of a previously approved agreement adopted by a requesting carriers if the ILEC proves either: (a) the cost of providing interconnection to the requesting carrier is greater than the costs of providing it to the carrier that originally negotiated the agreement; (b) the proposed adoption is technically infeasible; or (c) if the requesting carrier has decided to "pick and choose" provisions from several agreements, but failed to adopt legitimately related terms and conditions.

Moreover, the Joint Commenters believe that any such state commission review should occur under an expedited time frame, as has been adopted by the Texas and California commissions.[5] It is also essential that the Commission declare that those portions of the requesting carrier's agreement that are not in dispute are effective upon the date the ILEC received the requesting carrier's notice, and that the ILEC must continue to provide these remaining elements of the agreement to the

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[5] The Texas Commission's rules require ILECs to respond to a requesting carrier's opt-in request within five days with a list of legitimately related provisions, and if an ILEC challenges the adoption, the commission must issue a decision within 30 days. In California, ILECs have 15 days to contest a notice of adoption, and if an ILEC challenges the adoption, the commission has 10 days to resolve the dispute.

requesting carrier.[6] Otherwise, an ILEC could use a challenge to the adoption simply as another delay tactic.

D. The Commission Should Declare That ILECs Make Available Copies of Their Approved Interconnection Agreements and Amendments on Their Websites

In order to further facilitate requesting carriers' ability to adopt or opt-into ILECs approved interconnection agreement under Section 252(i), the Joint Commenters urge the Commission to declare that the ILECs place copies of all adopted interconnection agreements, including amendments, on their respective web sites. These approved agreements and amendments are public documents, however, requesting carriers often face delay, difficulty, and expense attempting to procure copies of these agreements and amendments from the state commissions. In many instances, amendments to these agreements may not be filed with the original agreement or are misfiled. Thus, competing carriers find it difficult to be sure that they are reviewing the current version of an agreement and are hindered in their efforts to determine whether they want to adopt a particular agreement under Section 252(i). A simple solution to this problem would be for the ILECs to list on their websites their approved interconnection agreements, including all amendments to the agreements, broken down by state.

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[6] The Joint Commenters also agree with MCIW that if the state commission finds that the ILEC has failed to meet its burden of proof under 47 C.F.R. § 51.809(b) or paragraph 1315 of the *Local Competition Order*, the effective date of adoption should be the date of notice of adoption.

III. Conclusion

Wherefore, for the foregoing reasons, the Joint Commenters respectfully request the Commission to issue a declaratory ruling adopting MCIW's requested clarifications of the rights of requesting carriers to adopt or opt-into previously approved interconnection agreements under Section 252(i) of the Act and Section 51.809 of the Commission's Rules, 47 C.F.R. §51.809.

Respectfully submitted,

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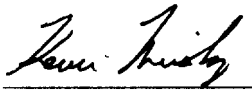
DSL.net, Inc.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March 2000, copies of the Joint Comments of BroadSpan Communications, Inc. d/b/a Primary Network Communications, @link Networks, Inc., and DSL.net, Inc. were served by hand delivery upon the following:

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